HBACT Letterhead

February 27, 2008

To: Senator Edward Meyer, Co-Chairman
Representative Richard Roy, Co-Chairman
Members of the Environment Committee

From: Bill Ethier, Executive Vice President & General Counsel

Re: **Raised Bill 362, AAC Riverfront Protection**

The HBA of Connecticut strongly opposes RB 362. The HBACT is a professional trade association with over one thousand five hundred (1,500+) member firms statewide employing tens of thousands of Connecticut's citizens. Our members are residential and commercial builders, land developers, remodelers, general contractors, subcontractors, suppliers and those businesses and professionals that provide services to this diverse industry. We also created and administer the Connecticut Developers Council, a professional forum for the land development industry in the state.

SB 362 effectively takes away from private land owners a huge amount of their land and is a tremendous expansion of jurisdiction for local inland wetlands and watercourses agencies in both geographic extent and in the reasons for denying regulated activities.

SB 362 will make a new corridor of upland on both sides of all rivers, very broadly defined in the bill, effectively OFF LIMITS to human activity. It is even more expansive than similar 2007 legislation.

SB 362 mandates that <u>100' of upland on both sides</u> of all rivers, streams, brooks and intermittent flows (but not ponds and lakes), **will be a protected resource – NOT just a statutory upland review area in which to review potential impacts to the watercourse.**

<u>If you doubt this bill would prohibit virtually all activity in this 200' upland corridor</u>, understand that this new protected riverfront area is made equivalent to actual wetlands and watercourses under current law. It would be a third protected resource area – again on par with the other two protected resource areas. Ask yourself how "off limits" are wetlands and watercourses themselves under current law? Most local wetland commissions treat wetlands and watercourses as off limits, even though, legally, activity is just "subject to regulation" and technically could be permitted <u>in</u> those resource areas. Virtually all human activity <u>directly in</u> wetlands or watercourses is not permitted by local wetland agencies. **SB 362 authorizes the same treatment for the new 200' riverfront area.**

Current law is very protective of all watercourses. If the intent of this bill is to protect rivers, streams and other watercourses, it is not necessary. The current

inland wetlands and watercourses act mandates a very difficult permitting standard on most human activity. Under current law, an applicant for any regulated activity anywhere (not just upland review areas) must prove with expert testimony that their activity will have no likely adverse impact on any wetland or watercourse.

RB 362 also creates seven (7) new grounds to deny human activity in this upland riverfront corridor (see lines 429 – 439). In particular, if there is **any adverse impact to wildlife habitat** within the 200' upland corridor, human activity can be prevented. **This amounts to a statutory repeal of the Avalon Bay v. Wilton Supreme Court decision on salamanders and a reversal of the legislative compromise adopted in 2004. We strongly urge you to not undo compromise legislation that all agreed to less than four years ago.**

Anyone (including builders, cities and towns, state agencies, and even existing home owners and land owners) wishing to conduct any activity **in or near** this new protected **upland** area will have to prove, by hiring experts, that their activity will have no adverse impact to the 100' of upland area next to these watercourses. Advocates for the bill recognize this will cause "sticky issues like allowing vegetation removal, lawns, views, etc." – all of which local wetland agencies could prevent under this new authority.

The preponderance of the evidence standard at line 424 also makes no sense. Lay agency members are not trained or equipped to apply this legal evidentiary standard and it conflicts with the substantial evidence rule that applies to appeals to the court of agency decisions.

Advocates have admitted that ponds and lakes are not included because home owners and land owners on ponds and lakes would be too upset. While lake owners are more organized through lake associations than riverside and streamside owners, streamside owners will be no less upset at this massive taking of their land by the government.

For all of the above reasons, we strongly urge you to not pass this legislation. It goes too far, interferes too much with the rights of private property owners, and it is wholly unnecessary to protect the state's watercourses.

Thank you for considering our comments on this legislation.

To see the watercourse maps for your town to visualize the potential impacts of this legislation – see the instructions on the next page.

Watercourse Maps for Every Municipality

SB 362, AAC Riverfront Protection, creates a new regulated resource area of 100' on both sides of all watercourses.

Check out the watercourse maps for your town below online and imagine 100' or more on both sides off limits to human activity. How many land owners in your towns will be affected?

ALSO – the maps online (i.e., SEE 4 EXAMPLES ATTACHED) do not include intermittent watercourses.

Go to the Community Resource Inventory Online at:
http://clear.uconn.edu/projects/cri/cri_online/00a_start.asp and follow the directions below:

Directions: When you get to the Community Resource Inventory Online (link above):

First, under "Map Sets" on the left, **click on** "Water Quality" **under** "5. Water Resources." A map of the first town in alpha order will appear.
Then, **choose your town below the map** and **click "Go" to the right** of the town drop down box. A map of the surface water classifications in your town will be shown. In most towns, almost all the blue watercourses shown will be class AA and A surface watercourses.